IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 15388 of 2006(F)

AGAINST THE ORDER IN IA 2354/2005. IN
OS.177/2002 of MUNSIFF COURT, TIRUR

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PETITIONERS:

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1. SANKARANARAYANAN ALIAS UNNI,
   S/O.OZHUR MADHAVI AMMA, MELMURI AMSOM AND DESOM,
   TIRUR TALUK, MALAPPURAM DISTRICT.

2. PADMANABHAN NAIR,
   S/O.KANNATHU DEVAKI AMMA,
   DO. DO.

3. PARIMALA, D/O.ERADU PADINHARETHIL
   GOPALAN NAIR,
   DO. DO.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

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1. ACHUTHAKUMAR, S/O.PUVVIL PULPATTA
   VARIYATHU SAROJINI VARASYAR,
   "GEETHALAYAM", KINAVALLOR AMSOM AND DESOM,
   PALAKKAD TALUK AND DISTRICT.

2. GEETHA, D/O.PUVVIL PULPATTA VARIYATHU
   SAROJINI VARASYAR, DO. DO.

3. RAJESH, S/O.PUVVIL PULPATTA
   VARIYATHU SAROJINI VARASYAR,
   DO. DO.

4. SHAYAMALA, W/O.LATE KOCHUNNI,
   PALLIKULANGARA HOUSE,
   MELMURI AMSOM & DESOM, TIRUR TALUK,
   MALAPPURAM DISTRICT.

5. SANIL, S/O.LATE KOCHUNNI,
   DO. DO.

6. SHYAM LAL, S/O.LATE KOCHUNNI,
DO. DO.

7. SHYAMA, D/O.LATE KOCHUNNI,
DO. DO.

BY ADV. SRI.SAJU.S.A

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)15388

APPENDIX

PETITIONERS'EXHIBITS

EXT.P1: TRUE COPY OF ORDER DATED 09.03.2006 PASSED BY MUNSIFF COURT, TIRUR IN I.A.2354/05 IN O.S.177/02.

EXT.P2: TRUE COPY OF WRITTEN STATEMENT FILED BY DEFENDANTS 1 TO 3.

EXT.P3: TRUE COPY OF WRITTEN STATEMENT FILED BY DEFENDANT NO.4.

EXT.P4: TRUE COPY OF COMMISSION REPORT FILED BY ADVOCATE COMMISSIONER.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.15388 OF 2006

DATED THIS THE 20th DAY OF DECEMBER, 2006

JUDGMENT

Petitioners are the plaintiffs. Respondents are the defendants on the file of Munsiff Court, Tirur. This petition is filed under Article 227 of Constitution of India challenging Ext.P1 order passed by Munsiff dismissing the application filed by petitioners to appoint a Commissioner. Under Ext.P1 order, learned Munsiff found that there is no necessity to appoint a Commissioner as sought for. It was found that the identity of the property was not disputed by the defendants and a report had already been submitted by Commissioner and in such circumstances, there is no necessity to appoint another Commissioner as sought for.

2. Arguments of learned Counsel appearing for petitioners is that for an effective decision of the case, Commissioner's report is necessary and therefore Ext.P1 order is to be quashed.

3. Learned Munsiff on the facts found that there is already a report submitted by Commissioner and that report is sufficient to decide the dispute involved in the case. It was also found that the identity of the properties was not disputed. Therefore the

identification of the properties by Commissioner is not relevant. The question is whether in such circumstances, the order is to be interfered in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India.

4. Learned Munsiff on the facts found that appointment of Commissioner is not necessary. Learned Munisff has given valid reasons for the same. In such circumstances the order cannot be interfered in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India. Even according to petitioners, there is already a report submitted by a Commissioner. Without setting aside that report, another Commissioner cannot be appointed. There is no merit in the petition.

Petition dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

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